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Supreme Court of the United States

OCTOBER TERM, 1929.

No. 47

FULLERTON LUMBER COMPANY,

Petitioner,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Supreme Court of the United States

OCTOBER TERM, 1929.

No. 664.

FULLERTON LUMBER COMPANY,

Petitioner,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

PETITION SHOULD BE DENIED.

(Italics appearing throughout brief my own.)

The petition should be denied because the United States Circuit Court of Appeals for the Eighth Circuit and the United States District Court for the District of Minnesota correctly decided the questions involved in accordance with the applicable decisions of this Court and no substantial questions are presented to justify the granting of a writ herein.

Official Report of Opinion in the Court Below.

Fullerton Lumber Company vs. Chicago, Milwaukee, St. Paul & Pacific Railroad Company, 36 Fed. (2) 180.

STATEMENT OF THE CASE.

Certain facts in addition to those set out by petitioner may be helpful.

Action was commenced in the United States District Court, District of Minnesota, Fourth Division, by H. E. Byram, Mark W. Potter and Edward J. Brundage, Receivers of the Chicago, Milwaukee & St. Paul Railway Company, to recover certain unpaid freight charges, amounting to $375.96, due respondent from petitioner for transporting a carload of coal from Norfolk, West Virginia to Kimball, South Dakota.

By stipulation of parties the Chicago, Milwaukee, St. Paul & Pacific Railroad Company was substituted as plaintiff in that action in place of the Receivers, after the discharge of the Receivers.

The car of coal was unloaded, and released by the petitioner at said Kimball on June 19, 1926 (R. 16). The freight bill was presented to petitioner's agent between 2:00 P. M. and 3:00 P. M. on said June 19th (R. 16). Respondent's agent received a check from petitioner's agent (R. 16) drawn on the Lumbard State Bank of Kimball, payable to the Chicago, Milwaukee & St. Paul Railway Company, in payment of freight charges in question, which contained on the face thereof the printed notation: "Collectible at par through the Federal Reserve Bank at Minneapolis" (R. 55).

On June 16, 1926, respondent's Treasurer wrote to respondent's agent at Kimball that he had noticed by a statement of June 8, 1926, that the cash reserve of the Lumbard State Bank was very low and collections in excess of $500.00 should not be exchanged at the Lumbard State Bank and further advising him that if he felt there was any question about the financial responsibility of the Bank he was to send

his collections direct to the Depository at Chicago (R. 78). The agent at Kimball was further instructed: "Due care should be taken that checks received in payment of transportation charges are from thoroughly financially responsible companies and individuals" (R. 78).

Respondent had no account in the Lumbard State Bank and petitioner was in a better position than respondent to know the financial condition of the bank (R. 26 and 30). Petitioner got statements from the bank showing the cash balance in the bank, and in a general way knew the condition of the bank (R. 35 and 36). The petitioner was a responsible company (R. 31).

Dickie, the Assistant Treasurer, who actually issued the instructions for the respondent to the Kimball agent, didn't know that many of the shippers had accounts in the local banks (R. 31).

The petitioner had its head offices at Minneapolis, Minnesota. Dickie testified he didn't have sufficient information to advise shippers that respondent felt that the Lumbard State Bank was in financial difficulties (R. 31), but he knew conditions were bad in some twenty-five, thirty or fifty other places in South Dakota and Western Iowa where he had instructed agents to send checks direct to respondent's depository (R. 30).

The proof shows the petitioner had a bank balance in the Lumbard State Bank more than sufficient to pay the check in question but there is no proof that the bank had sufficient cash on hand to pay the check.

Respondent's agent, after receiving the check, put it in his cash drawer at the depot (R. 17) and forwarded it by the first train (R. 36), which was on the next morning, Sunday, June 20th (R. 18) with his other receipts, to his depository, the Central Trust Company of Illinois at Chicago (R. 17).

Upon receipt of the check the Central Trust Company, on June 22nd, endorsed the check for the respondent (R. 27 and 28). The check then went to the Federal Reserve Bank at Minneapolis (R. 28) and was endorsed by that Bank on June 23rd. This latter bank, apparently, sent it to the Lumbard State Bank for payment but it arrived too late to be paid as the Lumbard State Bank closed its doors at noon on June 25, 1926 (R. 23). Petitioner's statement that the check was delayed nine days, so far as we know, is not based on the record. We do know the check was at the Federal Reserve Bank at Minneapolis on June 23rd.

Petitioner did introduce in evidence a large number of checks (R. 59 to 76, incl.) which were paid at the Lumbard State Bank during the years 1925 and 1926. One of these, for $502.70 was paid on June 15, 1926 (R. 59). The next check, one for $50.00, was cashed on June 23rd (R. 36). On June 21st to 23rd a deposit of $286.88 was made in the bank (R. 36 and 37). On June 24th they cashed a check for $20.55 and on the same day got a bank draft for $300.00 (R. 36). The bank draft, apparently, was never paid (R. 37).

Respondent was unable to obtain cash on the check in question and as petitioner refused to pay the freight charges, brought suit in the instant case to recover for the outstanding freight charges.

SUMMARY OF THE ARGUMENT.

(1) The respondent was and is obligated to collect and the petitioner was and is obligated to pay the full freight charges on the shipment involved.

L. & N. Ry. Co. vs. Maxwell, 237 U. S. 94, 35 Sup. Ct. 494, 495.

(2) The obligation of petitioner to pay the freight

charges had not been performed until they were actually paid in money.

Conference Ruling No. 207, adopted by the Interstate Commerce Commission September 15, 1906.

L. & N. Ry. Co. vs. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 268.

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Lake & Export Coal Corp. vs. C. & O. Ry. Co., 1 Fed. (2) 968.

Pennsylvania Ry. Co. vs. South Carolina Producers Assn., 25 Fed. (2) 315, 317.

C. & N. W. Ry. Co. vs. Wm. S. Stein Co., 233 Fed. 716.

A. J. Phillips Co. vs. G. T. & W. Ry. Co., et al., 236 U. S. 662, 35 Sup. Ct. 444.

Eggleston vs. Plowman, 49 S. D. 609, 207 N. W. 981.

(3) The statement on the check "Collectible at par through the Federal Reserve Bank at Minneapolis" justified the respondent in sending said check to its Depository at Chicago to be sent to the Federal Reserve Bank at Minneapolis for collection.

Spokane Valley State Bank vs. Lutes, et al., 133 Wash. 66, 233 Pac. 308.

(4) A check is not money. In South Dakota a payment by check is a conditional one only.

Legal Tender Cases, 110 U. S. 462, 4 Sup. Ct. 137, 138.

Townsend vs. Swallow, 91 Neb. 564, 136 N. W. 730.

Eggleston vs. Plowman, County Treasurer, supra.

(5) A claim for damages cannot be set up as a counter-

claim in an action to recover interstate freight charges.

Pennsylvania Railroad Co. vs. South Carolina Producers Assn., supra.

C. & N. W. Ry. Co. vs. William S. Stein Co., supra.

Illinois Central Ry. Co. vs. Hoopes, 233 Fed. 135.

Michigan Central R. Co. vs. Carl & W. J. Piowaty, Inc., 36 Fed. (2) 604.

Johnson, Brown & Co. vs. D. L. & W. Ry. Co., 239 Fed. 590.

D. L. & W. Ry. Co. vs. Henry Nuhs Co., 93 N. J. Law 309, 111 Atl. 223.

Oregon, Washington R. R. & Navigation Co. vs. Cascade Contract Co., 101 Oregon 582, 197 Pac. 1085.

ARGUMENT.

The respondent was and is obligated to collect and the petitioner was and is obligated to pay the full freight charges on the shipment involved.

The petitioner wishes to give the impression that the respondent carrier owed the sole duty to see that the check was cashed and that money was received to pay the outstanding freight charges. This is not an exclusive duty or obligation on the part of the carrier but it is a duty which is also owed by the shipper or consignee of the freight. If the Lumbard State Bank actually was solvent on June 19th, the petitioner could have gone to the Lumbard State Bank and obtained cash and turned it over to the Agent of respondent at Kimball in payment of the charges. The record shows that the petitioner's office at Kimball was only two and one-half blocks from the Lumbard State Bank (R. 24).

In *L. & N. Ry. Co. vs. Maxwell, supra*, this Honorable Court brings out the fact that shippers as well as carriers

must see that the proper charge is paid. On page 495, the Supreme Court said:

> "Under the Interstate Commerce Act, the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable. Ignorance or misquotation of rates is not an excuse for paying or charging less or more than the rate filed. This rule is undeniably strict, and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination."

The record shows, as previously outlined, that the shipment involved a movement from Norfolk, West Virginia, to Kimball, South Dakota (R. 17). The petitioner, of course, knew that the respondent's line of railroad did not extend to Norfolk, West Virginia, and therefore knew that it, for at least a considerable portion of the aforesaid charges, was merely acting as agent for other railroad carriers and as the respondent for a considerable portion of the charges was the agent only it would seem that the petitioner was presumed to know that the respondent was authorized to receive money only in payment of the charges of its principal.

This Honorable Court has held that a collecting agent is without authority to accept for the debt of his principal anything but what the law decrees to be legal tender or which is by common consent considered and treated as money and passes as such at par.

See *Ward vs. Smith*, 7 Wallace 447, 452, 19 Law Ed. 207.

Federal Reserve Bank of Richmond vs. Malloy, 264 U. S.

160, 68 L. Ed. 617, 44 Sup. Ct. Rep. 296, affirming *Federal Reserve Bank of Richmond vs. Malloy, et al.* (4th Circuit), 291 Fed. 763, and *Malloy vs. Federal Reserve Bank of Richmond*, 291 Fed. 997.

The obligation of petitioner to pay the freight charges had not been performed until the freight charges were actually paid in money.

It is respondent's position that the giving of this check did not constitute a payment of the freight charges for the reason that freight charges must be paid in cash or other legal tender and that until such check was actually cashed and the money deposited to the account of the respondent or the cash received by the respondent, the obligation on the part of the petitioner to pay the charges had not been discharged.

Certain decisions we think are conclusive on this matter and we first call the Court's attention to a rule of the Interstate Commerce Commission adopted by that Commission on September 15, 1906, known as Conference Ruling 207, reading as follows:

> "207. PAYMENT FOR TRANSPORTATION.—Nothing but money can be lawfully received or accepted in payment for transportation subject to the act, whether of passengers or property, or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or different compensation than the established rates or fares in effect at the time, precludes the acceptance of services, property, or other payment in lieu of the amount of money specified in the published schedules."

This ruling has been referred to and approved by this Court in the case of *L. & N. Ry. Co. vs. Mottley, supra.* In that case, on page 268, this Court said:

> "In our opinion, after the passage of the commerce act, the railroad company could not lawfully accept from Mottley and wife any compensation 'different' in kind from that mentioned in its published schedule of rates. And it cannot be doubted that the rates or charges specified in such schedule *were payable only in money.*"

On the same page, the Court further says:

> "*That money only was receivable for transportation is the basis upon which the Interstate Commerce Commission has proceeded; for, in one of its Conference Rulings* (207) issued in 1909, the Commission held that nothing but money could be lawfully received or accepted in payment for transportation, whether of passengers or property, for any service connected therewith, 'it being the opinion of the Commission that the prohibition against the charging or collecting a greater or less or different compensatjon than the established rates or fares in effect at the time precludes the acceptance of service, property, or other payment in lieu of the amount specified in the published schedules.' It is now the established rule that a carrier cannot depart to any extent from its published schedule of rates for interstate transportation on file without incurring the penalties of the statute."

On the same page the Court further says:

> "The statute manifestly means that the *purchase of* a transportation *ticket by a passenger*, and its sale by the company, shall be consummated only by the former

paying cash and by the latter *receiving cash* of the amount specified in the published tariffs."

The United States Supreme Court again went into this matter very carefully in the case of *C. I. & L. Ry. Co. vs. United States, supra.* On page 274 this Court said:

"The legislative department intended that all who obtained transportation on interstate lines should be treated alike in the matter of rates, and that all who availed themselves of the services of the railway company (with certain specified exceptions) should be on a plane of equality. Those ends cannot be met otherwise than by requiring transportation to be paid for *in money*, which has a certain value, known to all, and not in commodities or services, or otherwise than in money."

In *Lake & Export Coal Corp. vs. C. & O. Ry. Co.* (4th Circuit), *supra*, in referring to the Gray case, *infra*, the Court said:

"It was held that he was entitled to demand that sum in money from the railroad, it was not permitted to furnish it to him in transportation. In short, he would have to buy tickets, and it would have to *pay* him what it owed him *in cash*, and not in passes."

See also *N. Y. C. & H. R. R. Co. vs. Gray, supra. Pennsylvania Railroad Co. vs. South Carolina Producers Assn., supra.*

In *C. & N. W. Ry. Co. vs. William S. Stein Co., supra*, the Court said:

"Under the Acts of Congress relating to the transportation of interstate commerce, as construed by the Supreme Court of the United States in *Louisville & Nash-*

ville Railroad Company vs. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, and in *Chicago, Indianapolis & Louisville Railway Company vs. United States*, 219 U. S. 286, 31 Sup. Ct. 272, 55 L. Ed. 305, the carriers cannot accept in payment for the transportation of interstate commerce *anything but cash*, and no contract, however fair, looking to the payment for such services by an exchange of commodities can stand."

See also *L. & N. R. Co. vs. Maxwell, supra.*

A. J. Phillips Co. vs. G. T. & W. Ry. Co., et al., supra.

It is the respondent's position that the giving of the check did not discharge the liability of the petitioner for the freight charges until the respondent railway company had received money to cover the charges.

In *Eggleston vs. Plowman, County Treasurer, supra,* a taxpayer gave a draft to the county treasurer in payment of taxes and said treasurer neglected to present the draft to the bank for three weeks. In the meantime the bank failed. The Supreme Court of South Dakota held mandamus would not lie to compel the issuance of a tax receipt for the reason the taxes were not paid until cash had been received by the county treasurer. On pages 981 and 982 the Court said:

"This proceeding is by the property owner himself against the defendant in his official capacity as a county officer seeking to compel the performance of an official duty, namely, the issuance of a tax receipt, which receipt the officer has no right to issue until the taxes are paid. Section 6765, Rev. Code 1919.

"A county treasurer has no authority to accept any-

thing other than money in payment of taxes, excepting in such instances, not here material, as the statute expressly otherwise provides, and in the instant case the treasurer had no right to accept the draft as payment of the tax, and did not in fact undertake or agree so to accept the draft.

"*It is the usual rule, in the absence of an express agreement otherwise, that payment by draft or check is conditional payment only, ripening into absolute payment when the draft or check is in fact paid.*" These propositions are conceded by appellant, but he undertakes to apply to the defendant as a public official the same rule that would obtain between private individuals, and to maintain that the draft, although conditional payment only when offered, yet, having been retained by the defendant instead of being refused and returned, defendant's want of diligence in presenting it for payment operates to extinguish plaintiff's obligation.

"*We are of the opinion that this rule, applicable between private individuals, cannot govern as between an individual, whose duty it is under the law to pay his taxes and pay them in money, and a public officer, whose duty it is to collect the taxes and collect them in money.*"

We have the same situation in the instant case that existed in the Eggleston case. In our case freight charges can be paid in cash only and if any other device is used to pay the charges the debt is not discharged until cash is actually received by the railway company for the charges.

The statement on the check "Collectible at Par through Federal Reserve Bank at Minneapolis" justified the respondent in sending said check to its depository at Chicago to be sent to the Federal Reserve Bank at Minneapolis for collection.

The Central Trust Company of Illinois at Chicago was the depository for the respondent. The Lumbard State Bank was not a depository for the respondent.

We believe the case of *Spokane Valley State Bank vs. Lutes, et al., supra*, indicates that this check was handled in at least one of the customary manners of handling checks of this character and we call the court's attention to the following quotation in said opinion, appearing on page 310:

> "There appears to be some contention that it was negligence for the Exchange National Bank to send the draft for collection through the Federal Reserve Bank rather than sending it direct to Billings. The evidence shows that this was in accordance with the custom of banks. If the custom was a general one, as the evidence shows, and was reasonable, the appellants were bound by it, even though it was not actually known to them at the time they placed the certificate of deposit with the respondent for collection, according to the weight of authority, though there are cases holding the other way. The prevailing rule appears to be that the general usage and customs of banks in making collections will bind persons dealing with them in this business, whether such usage or custom be known or not; this upon the theory that, when a person hands over a negotiable instrument to a bank for collection without remark as to the course to be pursued, the bank is not bound to thrust upon him a statement of its intended

course. Either he knows and approves of the ordinary and customary way that collections are handled by banks, or he voluntarily trusts to the wisdom of the bank in handling the matter. He impliedly consents to its collection in the usual and ordinary way."

A check is not money. In South Dakota a payment by check is a conditional one only.

In the *American and English Encyclopedia of Law*, Second Edition, Volume 20, page 837, money is defined as follows:

> "Money is defined as that which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities, *being accepted equally without reference to the character or credit of the person who offers it* and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities."

In this connection we call the Court's particular attention to Defendant's Exhibit 4 which is a letter from the treasurer of the plaintiff to the agent at Kimball in which he states:

> "Due care should be taken that checks received in payment of transportation charges are from thoroughly financially responsible companies and individuals" (R. 78).

It is clear, therefore, that this check was accepted because of the good credit of the Fullerton Lumber Company and this and other checks, of course, are dependent upon the

character or credit of the payor and, therefore, are not money.

The following note appears in the *American and English Encyclopedia of Law*, Second Edition, Vol. 20, page 838:

> "In *Wills vs. Allison*, 4 Heisk. (Tenn.) 392, it was said: 'Money, said Sir William Blackstone, "is the universal medium or common standard, by comparison with which the value of all merchandise may be ascertained; or, it is a sign which represents the value of all commodities." 1 Black. Com. 276; Sto. on Con., Sec. 1118. And so it is defined by Lord Ellenborough in 13 East 20; and by Chancellor Kent in *Mann vs. Mann*, 1 Johns. Ch. (N. Y.) 236, to be cash, that is, gold and silver, or the lawful circulating medium of the country—including banknotes, when they are known and approved of, and used in the market as cash.' Standard of Value.—'Money is not only a medium of exchange, but it is a standard of value.' Per Field, J., dissenting, in Legal Tender Case, 110 U. S. 462, 4 Sup. Ct. R. 137, 138."

A check clearly does not come within the definition of money referred to above. It is neither a universal medium nor common standard by which the value of merchandise may be ascertained, it is not a standard of value and its value does depend upon the character and credit of the person who offers it.

In *Townsend vs. Swallow, et al., supra*, in a syllabus by the Court, it is said:

> "A decree for the payment of money means lawful money of the United States; the creditor is not required to receive private checks as a compliance with the decree."

Freight charges on goods moving in interstate commerce can be paid in money or cash only.

In the Elkins Act of February 19, 1903, Chapter 708, see 32 Stat. 847, Section 1, as amended by Act of June 29, 1906, 34 Stat. 584 (Mason's U. S. Code Ann. 1926, Title 49, Secs. 41 to 43), contains the following:

> "And it shall be unlawful for any person, persons or corporation to offer, grant or give or to solicit, accept or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant or give, or solicit, accept, or receive any such rebates, concession or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars."

The Interstate Commerce Commission in *California Sugar & White Pine Company vs. Director General, as Agent*, 73 I. C. C. Reports 338, at page 339, said:

> "The Interstate Commerce Act prohibits a carrier from charging, demanding, collecting or receiving a greater or less or different compensation than that specified in its tariffs, and nothing but money can be lawfully

accepted in payment for transportation subject to the act."

See also decision of said Commission in "Payment of Charges in United States Currency," 59 I. C. C. 263.

The payment of these charges took place in the state of South Dakota. The Supreme Court of that state clearly held that payment by a check is not a payment in money and is a conditional payment only and such payment becomes absolute only when the check is in fact paid.

See *Eggleston vs. Plowman, County Treasurer, supra.*

A claim for damages cannot be set up as a counter-claim in an action covering interstate freight charges.

The Circuit Court of Appeals of the Eighth Circuit is the only Circuit thus far to pass upon this question. In the instant case, on page 182, the Court states:

"(2) On the question whether a counter-claim for damages for losses arising out of the shipment may be interposed in this kind of an action to collect freight charges, there is conflict of federal decisions. It appears that the trial courts in this circuit confine the issues and the trial in the cases to the freight charges, and we think this conforms to the intent of Congress reflected in the acts relating to interstate commerce. A paramount purpose of the regulation of carriers is to compel uniform treatment of shippers, and the exaction of the published freight charges in cash payment from each and all shippers alike is a necessary step. To that end carriers are compelled to sue where through mistake or otherwise an undercharge has been made or collection has failed, and such suits are often burden-

some to the carriers and instituted with reluctance by them. If the suits are to afford occasion to litigate all the various claims shippers may make against carriers, the whole intent and purpose of Congress will be defeated. Instead of an aid to the uniform collection of the same cash charges from all shippers, the suits would inevitably open the door to gross discriminations under color of counterclaims and offsets which the courts could not prevent. In fact, a measure of discrimination is present as soon as a counter-claim is permitted in a carrier's suit for freight charges. Shippers who have rare dealings with carriers and no claims must submit to judgment as soon as their cases are reached and their debt for freight charges proved against them. Other shippers who have frequent dealings and claims may wait until issues are formulated upon their counter-claims or offsets and then they cannot be adjudged to pay their freight charges until all such matters of counterclaim and offset have also been litigated and determined. At the end of the litigation such shippers, if successful, will not be compelled like others to pay their freight charges in cash, but their freight bills will practically be otherwise discharged. Discriminations and preferences have taken many forms in the past and the intention of Congress to abolish them all is clear. The Federal Courts are also bound to the same purpose, and, as the practice of permitting counter-claims in these suits tends to defeat the purpose, the practice should not be permitted even though there is a statute of the state sanctioning counter-claims generally in law actions."

Many other well reasoned decisions support the conclusion

reached by the Circuit Court of Appeals in the foregoing quotation.

See *Pennsylvania Railroad Co. vs. South Carolina Producers Assn.* (D. C. Eastern Division of South Carolina), *supra.*

Michigan Central Railroad Co. vs. Carl and W. J. Piowaty (D. C. N. D. Ill. E. D.), *supra.*

Illinois Central Ry. Co. vs. Hoopes (D. C. Southern Dist. of Iowa), *supra.*

C. & N. W. Ry. Co. vs. Stein (D. C. Neb.), *supra.*

Johnson, Brown & Co. vs. D. L. & W. Ry. Co. (D. C. Southern Dist. Georgia), *supra.*

D. L. & W. R. Co. vs. Henry Nuhs Co. (N. J.), *supra.*

Oregon, Washington R. R. & Navigation Co. vs. Cascade Contract Co. (Oregon), *supra.*

We believe that the above mentioned decisions are in accord with the Maxwell, Mottley and Gray cases, *supra.*

CONCLUSION.

It is respectfully submitted that the check in question was handled in a manner authorized by the petitioner on the check in that it was "Collectible at par through the Federal Reserve Bank at Minneapolis." That freight charges can be paid in money only and that a check is not money. That an obligation rests upon the petitioner which is equal to the obligation of the respondent to see that freight charges actually are paid in money. That permitting counter-claims to be interposed in suits brought to recover outstanding freight charges will interfere with the uniform collection of cash charges from all shippers and will open the door to discriminations under color of counter-claims and offsets.

It is respectfully submitted that the Circuit Court of Ap-

peals has correctly decided this case and petitioner's petition for a writ herein should be denied.

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